BAR BULLETIN

PUBLISHED BY THE LOS ANGELES BAR ASSOCIATION

LEADING ARTICLES

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Vol. 14 SEPTEMBER, 1938 No. 1

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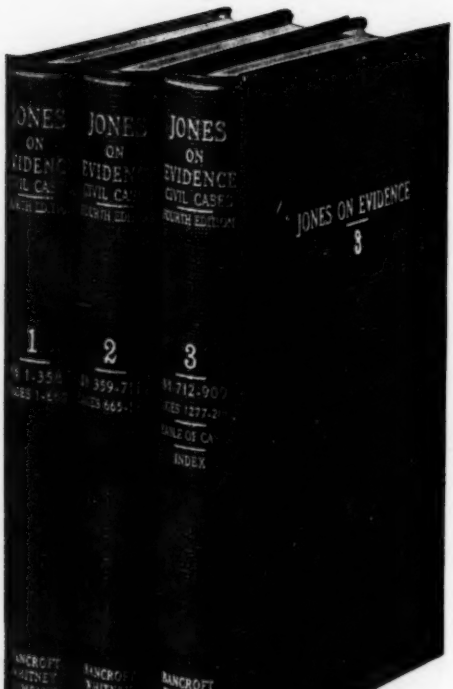

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TOM ROBINSON

Tom Robinson has passed away. Kindly, lovable, helpful Tom, who never had an enemy, and whose generous, tolerant mind sought only the best, and excused the worst, in every man. He will be sadly missed.

Among all the members of the Bar in this great county, Tom Robinson was known to the largest number, and was the best loved. For more than forty years he had presided over the County Law Library. If a monument to his memory were needed, other than the tower of good-will and kindness he builded along the pathway of the passing years, one may point to that great library as his memorial.

For it is, and ever will be referred to as "Tom Robinson's Library." He made it his life's work; watched over, nursed it through its early years, and raised it to its high renown as one of the nation's greatest storehouses of the law. A truly great library, builded by a noble, self-sacrificing man.

The thousands of lawyers whose business take them to the Library from day to day, will miss Tom. Everybody called him Tom and he knew everyone by his given name. He was always ready to help those who were in a hurry, or were confused in finding what they sought. In that great maze of lofty bookshelves, with their myriad of legal tomes, he was glad to point to the very spot where one would find the right book.

Yes, we shall miss Tom; and none more than those who have served with him on the Board of Trustees of the Los Angeles Bar Association during the past thirty-seven years. He was a Trustee of the Association all these years, as well as Treasurer. He saw many Presidents of the organization serve their terms and make way for others. He sat on the Board with hundreds of those who guided the destinies of the Association—many of them leaders of the local Bar—throughout the years. All of them were his true friends, and will feel a real sense of loss, and sincere sympathy for his family.

109439

IS THE CALIFORNIA $30 PER WEEK PENSION PLAN CONSTITUTIONAL?

By H. Landon Morris, of the Los Angeles Bar.

BECAUSE of the widespread interest in and comment on the $30 per week California pension plan, and the many arguments pro and con upon its constitutionality, it is thought that an analysis of its provisions, and a discussion of the constitutional question involved, will be of interest to members of the bar of the state.

This measure, officially designated as the California State Retirement Life Payments Act, is to be placed upon the ballot at the coming November elections, and proposes to add another article to the State Constitution.

This article will analyze the provisions of the proposed Act, and review the cases, which, it is believed, determine the question of its constitutionality. It will not discuss the practicability or workability of the measure.

The Act proposes to set up a plan, under an Administrator, to be appointed by the Governor,[1] whereby any person of fifty years or over, having certain residential and electoral qualifications and who is neither employed nor an employer, will receive, each week, thirty, $1.00 Retirement Compensation Warrants (later with the option of receiving part of this amount in warrants of $5.00 and $10.00 denominations).[2] The warrants will be issued by the Administrator, through either banks, which will be appointed Retirement Life Payment Agencies, or if, for various reasons, the banks do not accept the agencies, various merchants, and in the event they do not accept, the Administrator may set up Branch Retirement Life Payment Offices.

Coincident with the issuance of the warrants, the Administrator will issue Warrent Redemption Stamps, in two-cent denominations (later ten and twenty-cent denominations, to take care of the $5.00 and $10.00 warrants). These stamps will be sold to merchants and other people throughout the State. The Act contemplates that each week, for fifty-two weeks, one of these stamps will be affixed to the warrant, thus having thereon at the end of such period,

1. Commencing with the year 1940 the Administrator will be elected for a four-year term. Section 5.

2. For the first thirty weeks after the adoption of the Act, the payments will be in a rising scale from fifteen $1.00 warrants to the thirty $1.00 warrants beginning with the thirty-first week. Payment may also be made in lawful money of the United States instead of in warrants, commencing with the thirty-first week after the adoption of the Act. A commodity and rental index is to be used as the basis for computing the number of warrants to be issued, which can be more than thirty per week, but in no event less than thirty per week. No separate discussion of the alternative and optional money payment feature will be entered into, first, because the Act being operated on the warrant basis, exclusively, for thirty weeks, the whole thereof will be subject to attack for the reason set forth herein, and second, because, in the opinion of the writer, the emission and circulation of the warrants is so integral and necessary a part thereof, that no Court will be able to isolate the warrant feature of the Act from the optional cash payment and pass upon the constitutionality of each separately. Therefore, the entire Act must stand or fall upon the constitutionality of the warrants themselves.

stamps of the value of $1.04 (proportionately more in the case of the $5.00 and $10.00 warrants.)

The State then engages that, at the expiration of fifty-three weeks, and not later than fifty-seven weeks from their date of issue, it will pay the holder the face value of the warrants, in lawful money of the United States. The additional four cents per $1.00 on the warrants, it is planned, will pay for the administration of the Act.

The warrants are to be accepted in payment of licenses, taxes and other debts due to the State, and its political subdivisions, at any time after issue, provided the stamps due up to and including the date of presentation are affixed to the warrants.

Salaries of officers and employees of the State and its political subdivisions, are to be payable up to fifty per cent in warrants and purchases made by the State and its political subdivisions can be paid for in up to fifty per cent of the purchase price in warrants. New warrants will not be issued for these purposes, but warrants received by the State from their holders, in payment of taxes, etc., or for redemption in cash, will be used.

Merchants and business men who accept the warrants in payment of merchandise or services will not be required to pay either a sales tax (gasoline tax excepted) or State income tax on the portion of their sales of income derived from goods or services purchased with warrants. Banks which accept the warrants for deposit can make a charge of up to two cents for each warrant accepted, and in addition, any agent, who distributes the warrants to their recipients, will receive a commission of ten cents each week for each recipient assigned to such agent, and a commission of two per cent of all money collected for the stamps sold by such agent.

The Act provides for a fund of $700,000 to be paid to the Administrator out of the general fund of the State Treasury, to be used in administrating the Act, until the plan becomes self-sustaining through the receipt of money from the sale of stamps. $200,000 of this fund is to be used in advertising the plan to the public. The entire fund is to be repaid the treasury out of excess proceeds resulting from the sale of stamps.

The Act, if adopted, will be Unconstitutional, because the Warrants to be issued thereunder are Bills of Credit within the meaning of the Federal Constitution

Article I, Section 10, of the Federal Constitution provides, that,

> **"No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."**

The first expression of the United States Supreme Court on the question of bills of credit emitted by a State, was in *Craig v. State of Missouri*,[3] decided in 1830. There the Court defined a bill of credit in the following language:[4]

3. 4 Peters 409.
4. Pages 428 and 429.

"What is a bill of credit? What did the Constitution mean to forbid?

> In its enlarged and perhaps its literal sense, the term 'bill of credit' may comprehend any instrument by which a State engages to pay money at a future day; thus including a certificate given for money borrowed. But the language of the Constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the interpretation of the terms. The word 'emit' is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language denominated 'bill of credit.' To 'emit bills of credit' conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes, as money, which paper is redeemable at a future day. This is the sense in which the terms have been always understood."

In the later case of *Briscoe v. The Bank of the Commonwealth of Kentucky*,[5] the Court, after commenting upon the many different types of paper issued, which was within the constitutional prohibition, and after stating that the definition just quoted from the *Craig* case was too general in its terms, thus defined bills of credit:[6]

> "The definition, then, which does include all classes of bills of credit emitted by the colonies or States, is a paper issued by the sovereign power, containing a pledge of its faith, and designed to circulate as money."

Further in the same case, this additional definition was given:[7]

> "To constitute a bill of credit within the Constitution, it must be issued by a State, on the faith of the State, and be designed to circulate as money. It must be a paper which circulates on the credit of the State, and is so received and used in the ordinary business of life."[8]

Furthermore, the paper thus issued, does not have to be legal tender, to bring it within the constitutional prohibition. It was argued in the *Craig* case, *supra,* that because the certificates were not made legal tender, they were not bills of credit. The Court there said, disposing of this argument:[9]

> "The Constitution itself furnishes no countenance to this distinction. The prohibition is general. It extends to all bills of credit, not to bills of a particular description. . . . It is the less admissible in this case, because the same clause of the Constitution contains a substantive prohibition to the enactment of tender laws. The Constitution, therefore, considers the emission of bills of credit and the enactment of tender laws, as distinct operations, independent of each other, which may be separately performed. Both are forbidden. To sustain the one because it is not also the other; to say that bills of credit may be emitted if they be not made a tender in payment of debts, is, in effect, to expunge that distinct independent prohibition, and to read the clause as if it had been entirely omitted. We are not at liberty to do this."

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5. 11 Peters, 255 (1837).
6. Page 314.
7. Page 318.
8. See also *Poindexter v. Greenhow,* 114 U. S. 185, 190.
9. Page 434.

Summarized, a bill of credit, the issuance of which is prohibited to the States by the Federal Consttitution, is,

1. A paper issued by the sovereign power (State);
2. Containing a pledge of its faith for its redemption; and
3. Designed to circulate as money.[10]

The warrants proposed to be issued under the Act will be analyzed under the definitions of the United States Supreme Court given above.

1. The warrants are a paper issued by the sovereign power (the State).

The Act provides[11] that the Administrator "Shall cause to be engraved and printed and issued certain serially numbered warrants of the State of California which shall be known as *Retirement Compensation Warrants* of the State of California." They are to be printed on the best quality bank check paper. Section 6 of the Act provides:

> "The Administrator is hereby charged with the full power and authority and the command of the people of the State to carry out, supervise and administer the spirit and the intent of this article and all the provisions thereof; and the Administrator, the assistant administrators, and all deputies appointed or employed by the Administrator shall have the power to administer oaths in connection with the administration of this article."

There is no question but that the Administrator, in issuing the warrants will act as the agent of the State of California in so doing, and their issuance will, then, be that of the sovereign power. As was said in the *Briscoe* case, *supra*,[12]

> "A State can act only through its agents; and it would be absurd to say that an act was not done by a State which was done by its authorized agents."[13]

2. The Warrants are redeemable by the State, containing a pledge of its faith

The State's engagement is to pay the holder of the warrants the face value thereof, in lawful money of the United States, fifty-three weeks after their date of issue and not later than fifty-seven weeks thereafter, provided the warrants are fully stamped.[14] The faith of the State is ultimately the only factor assuring this payment, even though the Act contemplates the establishment of a fund, out of which they will be paid.[15] As was said by the United States Supreme Court in *Darrington v. The Branch of the Bank of the State of Alabama*,[16]

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10. It is understood that not all paper issued by a State is a bill of credit. See *Craig v. State of Missouri, supra, Briscoe v. The Bank of the Commonwealth of Kentucky, supra, Poindexter v. Greenhow, supra.*
11. Section 7.
12. Page 318.
13. It is interesting to note that under the Briscoe case, and the later bank note cases, if a State incorporates a bank, of which it is the sole stockholder, and the bank itself issues notes which circulate as money, the notes are not bills of credit, on the theory that the State, as sole stockholder, is not exercising its sovereignty. "As a member of a corporation, a government never exercises its sovereignty." (*The Bank of the United States v. The Planters' Bank*, 9 Wheat. 904.)
14. Section 18.
15. Sections 30, 31 and 32.
16. 13 How. 12, 16 (1851).

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> "Whatever agency has been employed to issue a bill of credit, the State promises to pay the bill, or to receive it in payment of public dues And when a particular fund was designated out of which the bill should be paid, it depended upon the faith of the State, whether such fund should be so appropriated."

In addition, assuming the fund thus to be created proves inadequate to pay the warrants when presented, the faith of the State is all that can be looked to. Or, if the Administrator refused to pay the warrants when presented and legislative provisions for suits against the State were repealed[17] the good faith of the State would be the holder's only recourse. As was said in the *Darrington case, supra,*[18]

> "A bill of credit emanates from the sovereignty of the State. It rests for its currency on the faith of the State pledged by a public law; . . . The fact that the State of Alabama may be sued by one of its citizens, does not alter the case. Such law may be repealed at pleasure, and if judgment could be obtained, the payment of it could not be enforced."

There is at least one case, however, which holds that if a special fund is created for the redemption of the warrants or notes they are not bills of credit, within the meaning of the Federal Constitution, because the general credit of the State is not pledged for their redemption. This is *Gowen v. Shute,*[19] a Tennessee case, which did not go to the United States Supreme Court, and which was decided nine years after the close of the Civil War, at a time when the Federal prohibitions against the States were none too popular. In the *Gowen* case the note stated on its face that the bearer would be paid "out of proceeds of cotton pledged for the redemption of this note." The court then said,[20]

> "The currency in question, then, is not based on the general credit of the State of Mississippi, but a particular fund has been set apart specially for its payment, and this distinguishes it from the bills of credit which lie under the ban of the organic law."

Besides being in complete conflict with the holding of the *Craig* case, *supra,* and the *Darrington* case, *supra,* this case is poorly reasoned. The fund set apart for the payment of the notes in the *Gowan* case was to be created from the proceeds of cotton pledged for that purpose. Under the act providing for the issuance of the notes any citizen of the State of Mississippi who pledged that, when called upon by the Governor to do so, he would deliver a certain number of pounds of cotton to the State at a stipulated price, received a certain number of these notes. Thus when the cotton was delivered to the State and sold, the proceeds were to be used for the note's redemption. It is readily conceivable that many things, such as crop failure, could intervene to prevent the delivery of the cotton to the State and thus prevent the establishment of the fund. This, of course, would leave the payment of the notes squarely up to the faith of the State, even though the holder was warned on the face of the note that its payment was to be made from the proceeds of pledged cotton.[21]

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17. The California Constitutional provision for suits against the State (Art. XX, Section 6) is not self-executing.

18. Page 17.

19. 4 Baxter (Tenn.) 57 (1874). See, also, for a similar holding, *The Central Bank of Georgia v. Little,* 11 Ga. 346 (1852).

20. Page 63.

21. The only condition of payment in this Act, is that the necessary stamps be affixed. Sections 7, 13 and 18.

It is interesting to note that thirteen years later, another Southern State repudiated this interpretation of a bill of credit.[22] In that case the court said,

> "The bills must be issued on the faith and credit of the State. It is immaterial whether or not a fund is assigned for their redemption; for if the fund perishes, or is diverted, or withdrawn from the reach of the creditor, the state is still liable for the payment of the bills."

3. The Warrants are designed to circulate as money

Under the proposed Act,[23] the warrants are to be accepted in payment of taxes and other debts due to the State and its political subdivisions. While this provision standing alone, would undoubtedly create some circulation of the warrants, it is not enough, in itself, to bring them within the constitutional ban. In *Poindexter v. Greenhow*,[24] the United States Supreme Court was considering whether coupons of certain bonds of the State of Virginia were bills of credit. The coupons were receivable for taxes, debts and demands due the State, at maturity and so stated upon their face. The Court said,[25]

> "The only feature relied on to show such a design (to have the coupons circulate as money) or to prove such a use is, that they are made receivable in payment of taxes and other dues to the State. From this it is argued that they would obtain such a circulation from hand to hand as money, as the demand for them, based upon such a quality, would naturally give. But this falls far short of their fitness for general circulation in the community, as a representative and substitute for money, in the common transactions of business, which is necessary to bring them within the constitutional prohibition against bills of credit. . . . In this case the coupons were issued by the State of Virginia, and in its name, and were obligations based on its credit, and which it had agreed as one mode of redemption, to receive in payment of all dues to itself in the hands of any holder; but they were not issued as and for money, nor was this quality impressed upon them to fit them for use as money, or with the design to facilitate their circulation as such.[26]

There must be more than a provision for their receipt in payment of debts due the state: namely, "a design that they circulate in the community, as a representative and substitute for money." This is exactly what the official sponsors of this initiative measure claim the intent and purpose of the Act to be. They say,[27]

> "Because every possible provision has been made to make self-liquidating warrants an ultra-safe, State tax exempt (except gasoline tax), super substitute for money, we believe that people will be able to purchase with warrants any commodity desired from any and all kinds of merchandising establishments. (Then follows a list of many examples of types of purchases). In short, Retirement Life Payment warrants will serve every purpose of commercial activities."

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22. *Bragg v. Tufts*, 6 S. W. (Ark.) 158, 162 (1887).
23. Section 13.
24. 114 U. S. 185.
25. Page 191.
26. This was one of the Virginia bond coupon cases on constitutionality of State Statutes making their obligations receivable in payment of taxes, etc., Sec. 100 A. L. R. 1340.
27. Undated pamphlet entitled, "Life Begins at Fifty with $30 a week for Life," under imprint of California Pension Plan.

The provisions of the Act itself leave no doubt that the very purpose of the issuance of the warrants is to insure their acceptance and circulation as money. At the outset the question may be legitimately asked, "What would be the purpose of issuing the warrants and giving them a monetary designation if they were not to be used as money? But the Act itself provides that any person who accepts the warrants waives his or her right to receive compensation under the provisions of the Old Age Security Law, which shows the design to substitute the warrants in this Act for the money in the Old Age Security Act.[28]

It has been said above that the Act provides for the acceptance of the warrants in payment of debts due to the State and its political subdivisions. The Act further provides[29] that up to fifty per cent of the salaries of officers and employees of the State and its political subdivisions shall be paid in the warrants; also[30] that contracts for purchases made by the State and its political subdivisions shall provide that payment therefor can be made in up to fifty per cent of the amount thereof, in warrants. Warrants will not be issued by the State for these purposes, but those warrants received back by the State, for redemption in cash, or for payment of taxes, etc., will be in turn paid over to officers and employees and to purchasers.[31] Thus the State will issue them to the recipients, then redeem them in cash or accept them in payment of taxes, etc., and re-issue them to employees or sellers to the State. Using the language of the Act,[32] this process,

"is (are) intended to facilitate the use and flow of warrants . . ."

in other words to facilitate their circulation as money.

Furthermore, the warrants are to be issued in denominations which will make them easily used as money;[33] and various inducements are held out to merchants and banks to accept them for purchases and deposit.[34]

The conclusion is inescapable that the warrants are expressly designed to circulate as money. On a much less strong showing, the United State Supreme Court said,[35]

> **"It seems impossible to doubt the intention of the Legislature in passing this act, or to mistake the character of these certificates, or the office they were to perform. The denomination of the bills—from ten dollars to fifty cents—fitted them for the purpose of ordinary circulation and their reception in payment of taxes and debts to the government and to corporations, and of salaries and fees, would give them currency. They were to be put into circulation; that is, emitted, by the government."**

Conclusion

It is seen from the foregoing that the warrants proposed to be issued under the Act, fall within the threefold requirements of a bill of credit as defined by the United States Supreme Court; that the issuance of bills of credit by the States is prohibited by the Federal Constitution. This being so, the Act, if adopted will be unconstitutional.

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28. Section 36.
29. Section 14.
30. Section 15.
31. Section 14.
32. Section 16.
33. Sections 7 and 8: $1.00, later $5.00 and $10.00 denominations.
34. Sections 19, 24 and 25.
35. Page 433.

Any Suggestions?

The Bulletin **Committee invites members to offer suggestions, and make criticisms, for the betterment of your monthly publication. Most of all we want contributions of articles by members on subjects of interest and assistance to others in practice. Every lawyer is capable of writing articles on some technical subject, arising out of his own practice experience. Won't you submit such material to the Committee? Send communications to the Bar Association office, 1124 Rowan Bldg.**

The Bulletin Committee.

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1. THE BAR BULLETIN Committee of the Los Angeles Bar Association will award the following prizes to successful participants complying with the following rules in writing and submitting legal articles to the BAR BULLETIN, within the period specified:

First Prize	$100.00
Second Prize	$ 75.00
Third Prize	$ 50.00

2. *Participants must confine their articles to subjects of current interest to the legal profession.* Awards will be based on general excellence, authoritativeness, originality of thought and value of the article to the particular field to which it relates. Any participant may submit more than one article.

3. First prize will be awarded to the participant submitting the best article, judged by the standards stated above; second prize to the participant submitting the next best article judged by such standards, and third prize to the participant submitting the next best article judged by such standards. Duplicate awards will be made to participants who are tied for any prize.

BAR BULLETIN CONTESTANTS

●

Contest Participants are Urged to submit articles as soon as possible in order to assure the appearance of one in each of the forthcoming issues of the Bulletin.

4. Three judges will be selected by the BAR BULLETIN Committee to judge the entries and award the prizes. The names of the judges will be announced prior to the close of the contest. Each participant expressly agrees that the decision of a majority of the judges on all matters submitted and their interpretation of these rules will be final, conclusive and binding upon each participant, and that the Bar Bulletin Committee of the Los Angeles Bar Association shall be under no obligation other than to award the prizes in accordance with the decision of the judges.

5. No entry fee is required and any member of the State Bar 35 years of age or under may participate in this contest.

6. Articles shall not exceed 5,500 words, inclusive of citations and comment on citations in footnotes, and shall be typewritten, double spaced, except quotations, which shall be single spaced and indented, and except footnotes, which shall be single spaced. Participant's full name and address shall appear on his article. All authorities and sources of information must be indicated in the body of the article or in appropriate footnotes. Acknowledgment of all quotations must be made. An original and two copies of each article must be delivered to the Bar Bulletin, care of Los Angeles Bar Association, 458 South Spring Street, Los Angeles, California, before the end of the contest.

7. Articles submitted must be the participant's own original work and must not have been published elsewhere.

8. This contest will close July 31, 1939. *However, participants are requested to prepare and submit their articles as soon as possible so that they may be available for early publication even during the contest, although this not a condition of the contest.*

9. Articles submitted in this contest will under no circumstances be returned to participants. Any article submitted may be published by the Bar Bulletin in its sole discretion during this contest or after the close thereof.

BULLETIN COMMITTEE:

BAR LUNCHEONS RESUMED. CHAIRMAN DAVE TANNENBAUM URGES ADVANTAGES TO MEMBERS

By David Tannenbaum, Chairman of Luncheon Meetings Committee.

THE committee in charge of the Bar Association Luncheons have given thought from time to time on the character of talks to be presented to the lawyers who attend the luncheons. It is and has been the considered opinion of the members of the committee that the Bar can best be served, insofar as these luncheon addresses are concerned, by having the speaker present some point or points of current interest to our profession and pertaining directly to the law. In other words, we wish those who attend to go away from the luncheon with some knowledge acquired or thought provoked which will be of help in the practice of the profession. The committee desires to avoid as much as possible, general talk or speeches pertaining to subjects other than those involved directly in the practice of the profession. Ours is an occupation or profession requiring constant re-education and constant acquisition of new points and new thoughts. The luncheon addresses, in a slight measure, supplement or are even a substitute for the many journal articles and other points of current interest contained in Bar publications. The speaker frequently gives those who attend a speaking acquaintance with the subject not familiar to the lawyers but concerning which they must have at least some slight familiarity.

Those who attend will testify to the usefulness of these luncheons given every other Tuesday. Speakers are selected who are authorities on the subjects. They give of their valuable time to condense within one-half hour some point or points which can be carried away by the lawyers present.

For example, Mr. James Bennett, distinguished lawyer of this community, spoke September 13th, on "Corporate Reorganization." Every lawyer in the community profited by hearing what Mr. Bennett said because every lawyer in the community must know of Mr. Bennett's studious scholarly approach and careful study of this field of law and of Mr. Bennett's ability to crystallize into a few salient points some of the perplexing problems relating to this particular field.

On Tuesday, September 27th, Mr. John B. Milliken, distinguished tax authority, associated with the office of Claude I. Parker, of this city, will speak on the Revenue Act of 1938. How fortunate it is that lawyers have an opportunity, without cost and spending but one hour for the luncheon and meeting, to hear so able a man summarize within so brief a time some feature or features of this Act which should be known to every lawyer of the community. Those who attend profit indeed.

JUDGE JOSEPH P. SPROUL

Memorial Resolution of the Board of Trustees of the Los Angeles Bar Association

The Honorable Joseph P. Sproul died on August 16, 1938. The Los Angeles Bar Association, of which he was a member for many years, desires to appropriately express its sincere regret at his death and to appropriately note his professional contributions to his community and his state.

Judge Sproul was born in Pomona, California, on March 30, 1884; was educated in the public schools at Norwalk, California, and at the University of Southern California, from which he graduated with the degree of Bachelor of Laws on June 16, 1913. He practiced law in this community until 1927, when he was appointed Judge of the Superior Court in the County of Los Angeles. He remained a member of that court until his death.

Judge Sproul's interest in his fellowmen and his community was evidenced by his membership in many civic and fraternal organizations. The esteem in which he was held by his fellow jurists is slightly indicated in that he was the Secretary-Treasurer of the California Judges' Association for a period of years. His individual sense of responsibility in connection with the military organization of the country caused him to enroll in the Reserve Officers Training Corps at the University of Southern California and at the time of his death he was a major in the United States Marine Corps Reserve.

These facts which have been stated are merely background and perhaps serve to indicate in some degree the more essential things that really made the man as we knew him. Judge Sproul was a good citizen and a just and able judge. His qualities were those of a good friend as well as those of an experienced and skilful jurist. His death is a distinct loss to the bar, the bench and the community.

WHEREFORE, BE IT RESOLVED that the Los Angeles Bar Association expresses its appreciation of the services rendered by Judge Sproul during his lifetime and its regret that death has terminated so useful a career, and directs that this resolution be spread upon the minutes of the Board of Trustees of the Los Angeles Bar Association; that a copy of this resolution be presented to the Superior Court of the State of California, in and for the County of Los Angeles, to be embodied in the minutes of that court; and, that a copy of this resolution be forwarded to the family of Honorable Joseph P. Sproul.

UNAUTHORIZED PRACTICE CONFERENCE COMMITTEE SET UP BY A. B. A.

FOLLOWING a number of conferences had between the American Bar Association's Committee on the Unauthorized Practice of the Law and the Committee on Lay Adjusters of the Insurance Section, with a special committee representing insurance interests, a joint committee was established at the Cleveland meeting to be composed of ten members; five of the American Bar Association and five of insurance interests, to which complaints concerning insurance adjusters or attorneys handling insurance claims might be referred. The Committee is to be known as The Conference Committee on Adjusters.

It was declared that no adjuster should advise any claimant to refrain from seeking legal advice or against the retention of counsel to protect his interest, nor should any adjuster deal directly with any claimant represented by counsel.

It was recommended that an early report be made concerning the following:

(a) Representation of minors and incompetents in the settlement of their claims;

(b) Representation of the insured's interest in excess of the policy limits.

(c) Defense by insurance companies of suits under a reservation of rights.

The Committee was empowered to adopt rules for procedure; elect its officers and provide all necessary and proper means for carrying out its designated duties.

For Attorneys---

WITH CLIENTS HOLDING BENEFICIAL INTERESTS IN TRUSTS TAXABLE AT CORPORATION RATES FOR INCOME TAX PURPOSES.

Many attorneys are advising clients having beneficial interests in trusts, taxable at Corporate Rates upon income (particularly where the asset consists of real estate producing rental income or possibly real estate subject to oil leases) to terminate such trusts and change the trust classification to that of a strict trust.

We are advised that in many instances, such a change can be made at this time without any gain or loss realized on its dissolution. The termination must be in accordance with the Revenue Act of 1938 and regulations issued pursuant thereto.

All changes must be made during the month of December, 1938.

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ARE WE COUNSELORS OR SOLICITORS?

BECAUSE of the tendency of a practitioner, representing a client upon a contingent basis, to treat a law suit as his own personal prerogative, the British bar and judiciary have not only made a distinction between counselors and solicitors with respect to the receipt of fees,[1] but have declared a contingency fee contract to be illegal and not binding upon the client.

There has been a tendency in California, as well as throughout our United States, to recognize the validity of these contingent fee contracts and to give to the attorney what many consider an unwarranted control of, and personal interest in, the outcome of litigation.

The case of *Zurich General Accident and Liability Insurance Co., Ltd., v. Kinsler, et al.*, just decided,[2] goes as far as any case in California to date in supporting the right of the attorney to control litigation and to receive a contingent fee even though he may be discharged from the case by the client.

In this case the defendant client and the defendant attorney were interpleaded by the plaintiff insurance company in an action to determine the respective rights of the parties in a sum representing the payment of a judgment in a personal injury action. The attorney sought one-third of the recovery as being that portion to which he was entitled under his contingent fee agreement with the client.

The client contended that, because of certain alleged misconduct on the part of the attorney, including insistence by the attorney upon a jury trial, her discharge of the attorney was with "good and sufficient cause" and that he was not entitled to any portion of the recovered judgment.

In reversing the decision of the trial court allowing the attorney a small "reasonable" fee, and in directing an award to the attorney in a sum equal to one-third of the amount deposited in court, the Supreme Court of California made two striking observations with respect to the existing law: (a) That an attorney employed under a contingent fee contract, and who is discharged without cause, is entitled to recover from the client the full amount provided by the terms of the contract; (b) that the words "good and sufficient cause" mean good and sufficient *legal* cause and that this latter question is one both of law and of fact to be decided in the particular case.

It was determined by the Supreme Court that the evidence upon which the judgment of the trial court was based was insufficient to furnish legal support for the finding of fact and the conclusion of law that the attorney was discharged for "good and sufficient cause."

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[1] 6 Cor. Jur.—Attorney and Client—Sec. 282, pp. 718-9.

[2] 96 Cal. Dec. 205 (August, 1938).

CLAIMS AGAINST PUBLIC BODIES IN TORT ACTIONS

By J. F. Moroney, Deputy County Counsel, Member of Los Angeles Bar

THE question of when and under what circumstances claims must be filed against public bodies as a condition precedent to an action arising out of tort is one which often perplexes the lawyer who has not specialized in the subject of municipal law. Unlike statutes of limitation, which are collected in one place in the Code of Civil Procedure, the law upon the subject of claims is scattered throughout the various codes and general laws so that it is not always an easy matter for one not familiar with the subject to find the latest expression of the legislative will. This article proposes to discuss the several statutes in California requiring the filing of claims against cities, counties, school districts and similar public entities as well as those against public officers and employees for damages arising out of tort. No attempt will be made to discuss the statutes *imposing* liability for tort although it will be necessary frequently to refer to such statutes.

In the first place, it must be remembered that these statutes requiring the filing of claims are mandatory and that there must be at least a substantial compliance with the statute. The claim must be filed within the statutory period or any suit based thereon will be forever barred. If the statute requires a verified claim, the filing of a letter or unverified claim

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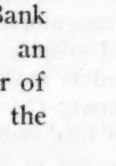

is insufficient. (*Spencer v. City of Calipatria*, 9 Cal. App. (2d) 267). A city or county may not waive any of the requirements of the statute, nor can any act upon the part of its officers estop the city or county or other public entity from asserting as a defense the failure of the plaintiff to file his verified claim in accordance with the requirements of the law. (*Cooper v. County of Butte*, 17 Cal. App. (2nd) 43). Furthermore, the fact that the claimant is a minor does not excuse him from filing his claim within the time prescribed by law. (*Phillips v. County of Los Angeles*, 140 Cal. App. 78.) With these preliminary observations in mind we will now consider the various statutes.

CLAIMS ARISING OUT OF DANGEROUS OR DEFECTIVE CONDITION OF PUBLIC PROPERTY

The most important statute upon this subject is Act 5149 of Deering's General Laws, which requires the filing of a verified claim with the clerk or secretary of the legislative body of any municipality, county, city and county, or school district within ninety days after an accident has occurred, whenever it is claimed that any person has been injured or property damaged as the result of the dangerous or defective condition of "any public street, highway, building, park, grounds, works or property." This act is a companion statute to Act 5619 of Deering's General Laws, which is the statute imposing liability for the dangerous or defective condition of public property. In other words, whenever liability is claimed against one of the public entities named in Act 5619 of verified claim must be filed within ninety days pursuant to Act 5149 of Deering's General Laws. It should be noted that the clerk or secretary of the legislative body is the proper person with whom to file the claim and that it is insufficient merely to leave the claim upon a desk in the office of the district or of the clerk or secretary. (*Phillips v. Huntington Beach, etc.*, 8 Cal. (2nd) 553).

In the case of *Douglass v. City of Los Angeles*, 5 Cal. (2nd) 123, it was held that the question of liability of municipalities for tort is a matter of general state concern and that the municipal authority to which a claim against the City of Los Angeles should be presented is the Clerk of the City Council and not the Board of Public Works. This case points out that there are two exceptions to this rule, namely, claims against the City arising out of the acts of the Department of Water and Power and those arising out of the acts of the Harbor Department. Such claims should be filed with the respective boards in charge of those departments.

A claim against the County should be filed with the Clerk of the Board of Supervisors; one against any of the school districts of which the Board of Education of the City of Los Angeles is the governing body should be filed with the Secretary of the Board of Education. Claims against other districts must be filed with the clerk or secretary of their respective governing bodies. No question arises with respect to state agencies, such as the Los Angeles County Flood Control District, which are not mentioned either in Act 5619 or Act 5149, since these agencies are not liable for the dangerous or defective condition of their property.

As to the contents of the claim, it is imperative that the statute be followed substantially. Claims must specify "the name and address of the claimant, the date and place of accident and the extent of injuries or damages received." Since the filing of the claim is a part of plaintiff's cause of action that fact, of course, must be pleaded.

CLAIMS UNDER SECTION 400 OF THE CALIFORNIA VEHICLE CODE

Section 400 of the Vehicle Code of the State of California imposes a liability upon the state and upon every county, city and county, municipal cor-

poration, state compensation insurance fund, irrigation district, school district, districts established by law and political subdivision of the state for negligence of operator of any motor vehicle owned by or driven for such public body. The Vehicle Code itself is silent regarding the necessity for filing a claim as a condition precedent to the establishment of liability under Section 400 of that code. However, there are other general provisions of law which require the filing of claims within specified times against most of the public entities named. Thus, Section 688 of the Political Code requires any person who has a claim for negligence against the State of California to present his claim in accordance with the provisions of Section 667 of the Political Code within two years after such claim shall have arisen or accrued.

Section 4075 of the Political Code requires that all claims against a county, whether founded upon contract or upon any act or omission of the county or any officer or employee thereof, or of any district or public entity the funds of which are controlled by the board of supervisors or of any officer or employee of any such district or public entity be filed with the board of supervisors within one year after the last item of such claim has accrued. Hence, as a condition precedent to a suit against a county or against any such district or public entity for negligence under Section 400 of the California Vehicle Code, a verified claim must be presented to the board of supervisors within one year after the accident.

Under Section 3 of the Los Angeles County Flood Control Act, the Board of Supervisors of Los Angeles County are empowered to act as *ex officio* the Board of Supervisors of the District and have the same powers and duties with respect to the District as the Board of Supervisors of Los Angeles County have with respect to the County, and, hence, claims against the Los Angeles County Flood Control District for the negligent operation of motor vehicles must be filed within one year with the Board of Supervisors of the Los Angeles County Flood Control District pursuant to Section 4075 of the Political Code.

Claims against school districts and boards of education resulting from the negligent operation of motor vehicles must be filed with the secretary or the clerk of the district within ninety days after any accident causing injury or damage has occurred. This is required by Section 2,801 of the School Code, which is a general section imposing liability upon school districts and boards of educa-

To Attorneys

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tion in the name of the district for the negligence of their officers or employees and requiring the filing of a verified claim within said ninety day period.

Section 376 of the Charter of the City of Los Angeles provides that "except in those cases where a shorter period of time is otherwise provided by law, all claims for damages against the city must be submitted within six months after the occurrence from which the damage arose . . ." This would, of course, include claims for the negligent operation of motor vehicles under Section 400 of the Vehicle Code. For the procedure to be followed in filing claims against other municipalities for liability imposed under Section 400 of the Vehicle Code the respective charters of such municipalities must be consulted.

CLAIMS ARISING OUT OF GENERAL NEGLIGENCE

Most public bodies are not liable for the negligence of their officers or employees when acting in a governmental capacity, with the exception, of course, of the two statutory cases already referred to. However, as pointed out above, the legislature has made an exception to this rule of nonliability for general negligence in the case of school districts and boards of education in 2.801 of the School Code, which makes boards of education and school districts liable for the general negligence of their officers, agents and employees when acting within the scope of their employment. By the same section of the School Code, a claim based upon such liability must be filed as provided in that section within ninety days after an accident has occurred. This includes, of course, injuries sustained by pupils alleged to have been caused by the negligence of a teacher or other employee of the district. A municipality when acting in a proprietary capacity is liable for the negligent acts of its agents. A claim for damages so arising against the City of Los Angeles should be filed within six months pursuant to the provisions of Section 376 of the City Charter. If the acts complained of are those of the Department of Water and Power, the claim must be filed with that department; if the acts complained of are those of the Harbor Department, the claim must be filed with the Harbor Commissioners. (*Huey v. City of Los Angeles,* 137 Cal. App. 48.)

CLAIMS FOR TAKING OR DAMAGING PRIVATE PROPERTY FOR PUBLIC USE

Where the claim is based upon a taking or damaging of private property for a public use the general provisions as to claims apply. Thus, section 376 of the City Charter prescribing six months applies to the City; section 4075 of the Political Code prescribing one year applies to counties, the Los Angeles County Flood Control District, and all districts the funds of which are under the control of the board of supervisors. There is no statute requiring the filing of claims against board of education and school districts except 2.801 of the School Code and Act 5149 of Deering's General Laws, which relate only to claims arising out of negligence. Hence, a suit may be filed against a school district for the taking of private property for a public use without the preliminary step of filing a claim.

CLAIMS AGAINST PUBLIC OFFICERS AND EMPLOYEES

Considerable confusion has arisen over the purpose and effect of Act 5150 of Deering's General Laws. Several decisions have treated this statute as one

requiring the filing of a claim within ninety days in all cases in which negligence is claimed against a public body. (See, for example, *Myers v. Hopland U. E. School District,* 6 Cal. App. (2d) 590). However, Act 5150 of Deering's General Laws, as its title both before and after the amendment of 1937 clearly discloses, was intended to provide a procedure for the filing of claims against public officers or employees only and not against the public entity itself. (It is to be noted that the word "officers" is defined in Section 4, as including agent and employee). It is true that the broad language of Section 1 might seem to include suits against public bodies themselves and it is no doubt due to the fact that the limited language of the title of Act 5150 was not called to the attention of the court that the decision in *Myers v. Hopland, U. E. School District,* 6 Cal. App. (2d) 590, and several others have found their way into the books. However, as the court pointed out in *Jackson v. City of Santa Monica,* 13 Cal. App. (2d) 376, the title to Act 5150 of Deering's General Laws, as amended in 1933, related only to the liability of *officers and employees* for negligence *in connection with the dangerous or defective condition of public property.* It is to be noted that a petition to have the cause in the Jackson case heard in the Supreme Court was denied by the Supreme Court. At the time of the decision in the Jackson case the title of the act was not broad enough to include liability of public bodies themselves or to include liability of public officers or employees for general negligence.

In 1937 an attempt was made to breathe life into the dead provisions of Section 1 of Act 5150 by amending the title of the Act so as to include claims against public officers or employees for negligence, whether arising out of the dangerous or defective condition of public property *or* out of other acts of negligence. However, since the amending act of 1937 merely amended the title and did not re-enact the portions of the act which were declared unconstitutional in the *Jackson* case it may be asserted with some confidence that the amendment of 1937 was entirely abortive. In other words, Act 5150 applies only where an attempt is made to hold an officer or employee of one of the public entities named for negligence arising out of the dangerous or defective condition of public property.

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All members of the State Bar are urged to attend the Convention that will consider many matters of vital interest to the Bar.

It will undoubtedly be the most important session since the establishment of the integrated bar in California. The question of Public Relations activities will be one of the important subjects discussed.

HIGH PRAISE INDEED

The Journal of the American Judicative Society, in its August number, says of BAR BULLETIN and the Los Angeles Bar Association:

What One City Bar Association Does

"A recent number of the monthly BAR BULLETIN of the Los Angeles Bar Association lists seventeen lines of activity, some of which are fairly common, and others more or less original. THE BULLETIN itself is among the best of the publications of its kind and is essential to most of the other lines of work. Members place emphasis on their bi-weekly luncheon and monthly dinner sessions, devoted to the practical side of the members' interests. Support in money and personal work is given to the city's legal aid bureau. Particularly strong is the co-operation with the programs of the State Bar.

It has been among a few leaders in educating voters concerning the qualifications of candidates for the bench. The bar plebiscite includes all practitioners in the county. The Association naturally has a full-time secretary. Its board of trustees hold weekly sessions.

Among the less common, or unique activities are the following: The Junior Barristers committee comprising about 400 young lawyers, and the Women's Junior committee, both active in a number of appropriate fields.

A regularly sustained legislative program for improvement in the administration of justice.

A radio program every Saturday evening to inform lay listeners on topics of interest and benefit to them.

An experienced lawyers service, which enables members to consult with experts in many less common fields of practice.

An arbitration committee to adjust controversies between members and their clients.

The ethics committee gives opinions to members who have doubts as to the interpretation of canons.

Lecture courses are sponsored on subjects of public interest and are given at the public library auditorium.

The post-admission lecture courses for members have met with marked success. There are courses for experienced practitioners and a general course for juniors. The demand for these courses is well illustrated by the fact that the tickets for the two courses brought in $4,490."

HERBERT WARE PACKARD

Memorial Resolution of the Board of Trustees of the Los Angeles Bar Association

RESOLVED, That in the death of Herbert Ware Packard on Monday, August 15, 1938, the legal profession and this Association have lost a valued and honored member, the community an upright and respected citizen, and his family and friends one whose devotion to them was inspirational and whose example to them was one of exemplary conduct.

Mr. Packard was born June 23, 1875, at Webster City, Iowa; was admitted to the bar in 1897, at Chicago, Illinois; attended Stanford University from 1893 to 1895; graduated from Northwestern University (Law), 1897, with the degree of LL.B., and has practiced his profession in California since 1912.

Mr. Packard represented in every way the highest ideals of the legal profession. He possessed an absolute integrity, high principles and unswerving loyalty to client and duty. His ability was of highest character and his deeply conscientious work for others he did not heed nor spare himself.

BE IT FURTHER RESOLVED, that the foregoing be made a part of the records of this Association and that a copy be sent to his family.

UNLAWFUL PRACTICE NEWS

LOUISIANA TRUST ACT AMENDED

By Act No. 81 of the 1938 Session of Louisiana Legislature the Trust Act of 1920 was amended, providing that the Trustee should in no manner influence or attempt to influence the selection of any attorney or firm of attorneys to represent the Trust Estate, and that to do so would be deemed a solicitation of business for the particular lawyer or firm.

TEXAS COMMITTEE MAKES RECOMMENDATIONS

At the annual meeting of the Texas State Bar Association held at Houston, Texas, in July, the State Committee on Unlawful Practice made eight recommendations to the Bar Associations.

The most significant recommendation was that of No. 7, urging that Senate Bill 62, of the 43rd Legislature, be amended to leave to the courts the power to determine what constitutes the practice of law, rather than attempting to apply a legislative definition.

MASSACHUSETTS COURT CLARIFIES FORMER OPINION

By reason of a recent petition being filed in the Supreme Judicial Court of Massachusetts by Arthur S. Lyon and others, requesting the court to clarify its opinion in the matter of the Manufacturers Protective Association, Inc. The court clarified the opinion in line with the declaration of principles agreed to by the National Association of Collection Agencies and the Bar Association in May, 1937, at Washington.

CORPORATION FOUND GUILTY OF CONTEMPT IN ILLINOIS

In the recent case of *The People of the State of Illinois, ex rel., The Chicago Bar Association, vs. Illinois Appraisal & Surveying Co.,* Circuit Court of Cook County, the respondents were found guilty of contempt of court, and sentenced to pay a fine of $500.00.

DETECTIVE BUREAU ENJOINED IN MINNESOTA

On May 26, 1938, Robert M. Thompson, individually and doing business as Business Men's Detective Bureau, District Court of Hennepin County, Minnesota, was enjoined permanently from engaging or holding himself out as qualified to practice the law, or to settle claims, and soliciting business for lawyers.

INJUNCTION GRANTED IN OHIO

Following the recent *Hanley Case* (Ohio) a decree of injunction was issued out of the Common Pleas Court of Dayton, upon the petition of the Dayton Bar Association, against The Ney Ohio Company, restraining the said corporation and its officers from the unauthorized practice of the law.

UNAUTHORIZED PRACTICE BILL SUSTAINED IN RHODE ISLAND

On June 29, 1938, the Superior Court of Providence, Rhode Island, sustained the constitutionality of the bill recently passed by the Rhode Island Legislature to prevent unauthorized practice of the law.

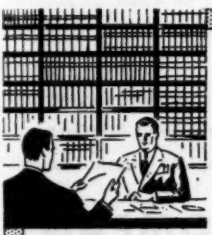
NEW SERIES OF LECTURES FOR LAWYERS SPONSORED BY THE ASSOCIATION

BEGINNING September 15, and continuing weekly, to and including October 6, 1938, a new series of lectures on legal topics will be held by the Los Angeles Bar Association.

All of these lectures will be held from 7:30 to 9:30 in the evening on the dates specified. The place of meeting will be Porter Hall, 3660 University Avenue.

A registration fee of $5.00 for each subject will be charged to members of the Los Angeles Bar Association and a registration fee of $10.00 for each subject will be charged to lawyers who are not members of the Los Angeles Bar Association. The registration for each subject entitles the registrant to admission to the four lectures covering the subject.

The series of lectures given last spring met with great approval and, in our opinion, were of lasting benefit to the members of the Bar who heard them. Since both of the above mentioned courses deal with newly enacted legislation of great importance, we believe they furnish an excellent opportunity to keep



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abreast of the times, and we hope that a great number of lawyers will take advantage of it.

The lecturers suggest that those attending familiarize themselves as much as possible with the new Rules and with the new Bankruptcy Act prior to attending the lectures, as they will be permitted to ask questions at the close of each lecture.

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